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Current Topics.

Trinity Law Sittings.

THE figures of the cases in the lists for the law term which commenced on Tuesday, 2nd June, show, as they did last term also, a substantial increase over those for the corresponding term of last year. In the King's Bench Division there is an increase of 102, to 269. As against fifty-three long non-jury actions last year, there are now ninety-nine, 154 short non-jury as against 100 last year, three short causes (seven last year), and thirteen commercial cases as against seven last year. The number of cases in the list for trial in the Chancery Division is sixty-three, as compared with thirty-four last year. The number of companies' matters has risen from forty-seven to fifty-four. There are two appeals and motions in bankruptcy, as against seven in the corresponding term of last year. In the Probate, Divorce and Admiralty Division there are fourteen Admiralty actions, an increase of eight, and there are 1,850 Divorce cases, as compared with 768 in the corresponding term of last year. The undefended suits number 1,114, as against 485 last year, and there are 736 defended suits, as against 283 last year. At the time of writing the figures for the Probate cases are not yet available. There are eighty-three cases in the Divisional Court, a decrease of twenty-two, and forty-four are appeals, exactly the same number as last year. The total number of appeals to the Court of Appeal is seventy-seven, as compared with seventy-six in the corresponding term of last year. Nine are from the Chancery Division (four last year), thirty-one from the King's Bench Division (thirty-nine last year), seven from the Probate, Divorce and Admiralty Division (two last year), and nineteen from county courts (twenty-six last year), seven of which are workmen's compensation cases.

Statutory English.

THE controversy on the kind of language in which Acts of Parliament are drafted (*ante*, p. 149) was continued in the correspondence columns of *The Times* last week, commencing with a notable contribution from Professor A. L. GOODHART in defence of the statutory draftsman. He began by quoting from a recent work by Sir CECIL CARR "Concerning English Administrative Law," where he said that in More's "Utopia" the laws could be read and understood by every one of the subjects. But unfortunately, as the author added, "in the world of fact statutes are many, long and obscure. The literary appeal is inconspicuous. On the whole the layman studies legislation vicariously. He asks his lawyer what it is all about." Legislation by reference, wrote Professor GOODHART, if kept within reasonable bounds, causes no difficulty to the lawyer, as he is in possession of the previous statutes. To abolish this convenient method would be to increase the volume of the statute book to an alarming extent. In answer to Professor SMITH'S argument that statutes should be drafted in lucid and literary form Professor GOODHART stated that unfortunately that was not possible in England owing to the rules of interpretation adopted by the courts. He quoted Sir CECIL CARR, who said that in drafting a statute it was necessary to make it "judge proof" so as to guard it against destructive interpretation by the courts. It is hardly surprising, he concluded, that the draftsman attempts to cover every possible contingency in precise and technical language, leaving no room for any ambiguity, and added that if the courts were to adopt what has been termed the logical or reasonable method of interpretation, then it would be less difficult for the draftsman to phrase his statute in logical and reasonable language. Mr. COLIN CLAYTON followed with a letter to *The Times* of 28th May, in which he asked that a sequence of short sentences should be preferred by the parliamentary draftsman to the long and complicated sentences in actual use. He also asked that words like "begin" and "before" should be used in preference to "commence" and "prior to." A witty letter from an anonymous parliamentary draftsman in *The Times* of 30th May said that the writer had never in his life used the expression "prior to" and he had never used the word "commence" except where its use was rendered necessary by existing legislation such as s. 36 of the Interpretation Act, 1888. "Another instance," said the writer, "of legislation by reference." With regard to legislation by reference it is not so much its use as its excessive use of which the bench and the profession have complained in the past, and will continue to complain, until it is mitigated. Mr. COLIN CLAYTON'S plea for shorter sentences will meet with much support, as will also his advocacy of simpler words where no ambiguity is caused. The word "but" is infinitely preferable to the phrase "provided always that," and it is certainly not as confusing to the lay mind. It is difficult to follow Professor GOODHART'S complaints as to methods of judicial interpretation, and, to use the language of the courts, further and better particulars should be provided. The experience of advocates would tend to confirm that the courts have rarely in history inclined so much against strictly technical interpretations as they do to-day.

The Dock Brief.

THE interesting and useful old practice of briefing from the dock is by no means defunct nowadays, although its application under conditions of restricted man power is becoming more and more difficult. At the Surrey Quarter Sessions on 19th May a number of barristers left the court when a prisoner applied for a dock brief. The chairman protested against the action of those who had left the court, and said that it was not in the best traditions of the Bar. He expressed a hope that there would not be repetition of that conduct. The result was that the prisoner had only two members of the Bar from whom to chose his advocate. When the chairman repeated his protest to the members of the Bar who returned to the court after the prisoner had chosen his advocate, one of the barristers stated that there was a ruling that members of the Bar might leave the court if a dock brief was asked for. That ruling, he stated, had the support of the late Sir ERNEST WILD when he was Recorder of London. He added that some senior members of the Bar left the court in order to give an opportunity to junior members of the Bar. Many are the stories, apocryphal and otherwise, relating to the dock brief, with its handsome fee of £1 3s. 6d., which the Bar Council once ruled should be £1 1s. If, as would seem to be the case, it is an ancient right of a prisoner on a criminal charge to employ a barrister who is in the court for that fee without the intervention of a solicitor, it would reduce the right to a nullity at the discretion of the Bar if every barrister who was in court had the right to leave the court on it becoming known that he might be so briefed. On the other hand, very inexperienced members of the Bar who are eager for the lessons that can be learned from defending experienced criminals almost impromptu, might well complain if even this method of learning their craft were taken away from them by their more expert brethren. Sometimes, strange though it may seem, even the prisoner complains, as in the case of the "old lag" who, on being asked whether he had anything to say before sentence was passed upon him, replied: "Nothing but to plead the youth and inexperience of my counsel." Very often, however, the client is so satisfied that he expresses a wish to increase the fee, a wish which of course cannot be gratified, and sometimes they have even been known to offer an increased fee as an inducement to greater effort, as in a case in the writer's experience, in which the prisoner offered an extra half-guinea if a question were put to the prosecutrix in cross-examination to show that the watch alleged to have been stolen was not gold, but some worthless imitation.

Fire Watching Again.

ACCORDING to the *Evening Standard* of 29th May, the Town Clerk of Maidstone stated that day, after a meeting of the town council, at which the matter was discussed in private, that a defect had been discovered in the regulations relating to fire-watching. He said that persons who did not register on the prescribed date were not liable for compulsory service and could not be penalised if they refused to do fire-watching in their own homes. This did not apply to the Business Premises Order, under which men were still liable to do compulsory duty at their places of employment. He said that representations to the Ministry of Home Security to get this anomalous position put right had so far been unsuccessful. The position under the Civil Defence Duties (Compulsory Enrolment) Order, 1941, appears to be that the Minister may direct that the order shall apply to the area of a local authority (para. 1) and the local authority may then, "from time to time, by notice published in the prescribed manner, require all male persons, being British subjects who at the date of the notice are resident in the area or in such part thereof as may be prescribed and are of the prescribed age and are not exempted as hereinafter provided, to make, at such place and time, in such manner and to such authority as may be specified in the notice, an application to be registered (para. 2). Thereupon the local authority may serve on the person registered a notice stating that he has been registered for the performance of fire prevention duties in the area." Quite apart from the fact that any person failing to register in accordance with a notice is guilty of an offence under the Defence (General) Regulations, under reg. 26A, of which the order was made, there appears to be nothing in the order to prevent the local authority from publishing more than one notice where necessary, and it is difficult to see where the anomaly lies. It seems to be entirely for the local authority to prescribe a date or dates for registration, and there ought to be no difficulty in securing more than one registration where the situation warrants it.

"Blitzed" Cities and Replanning.

THE mayors of a number of "blitzed" cities in the United Kingdom have expressed their views in the columns of the *Observer* of 31st May on the proposal of Sir CHARLES BRESSEY, to which we referred last week (*ante*, p. 150), that planning powers must be wielded by authorities possessing full powers of ownership. The Lord Mayor of Birmingham expressed agreement with Sir CHARLES BRESSEY, and added that if cities were to be in keeping with the needs of the twentieth century rather than the nineteenth—or in some cases the eighteenth or seventeenth—there would have to be drastic replanning on totalitarian lines, irrespective either of vested interests or fossilised tradition. The local authority, he stated, must be given complete power over all land in the area, and the requisite financial credit to purchase it and develop it as required. The Lord Mayor of Bristol wrote that ownership by the municipality would enable the best schemes to be evolved, provided that the National Exchequer bore a proper part of the cost of acquiring areas suitable for planning. He recommended that the precedent contained in the Housing Act should be followed: immediate entry on the land can be made and compensation and price fixing should follow possession by the authority. The Lord Provost of Glasgow held that the whole cost of the buildings and sites required for clearance should be met from national funds without charge to the local ratepayers. The Lord Mayor of York and the Lord Mayor of Plymouth expressed themselves to the same effect as Sir CHARLES BRESSEY, and the Lord Mayor of Portsmouth added that one of the first things the Ministry ought to tell cities and towns was the added area they were to be given, so that they might be able to lay out this in conjunction with the replanning going on within the city itself. The Mayor of Coventry said that Coventry meant to live up to her name as the centre of progress, but pointed out that they were faced with a multiplicity of small ownerships in the city areas, the lack of enabling powers, and a central government lead in the form of a national plan. The Mayor of Exeter also stressed the need for government help. From this symposium of views one valuable resulting consensus of opinion seems to emerge—that the blows which have fallen so grievously on our cities must be remedied by a national policy and financed by national finance, so that as far as possible the burden of replanning shall be shared equally by all.

Poor Persons Procedure.

ACCORDING to the annual report of The Law Society on the working of the Poor Persons Procedure during 1941, the number of applications shows an increase as compared with 1940, the majority being concerned with matrimonial matters. This is not surprising, as public preoccupations in 1940 were hardly consistent with any maintenance of the normal flow of litigation, even of a matrimonial nature. Any increase, however, in the number of matrimonial cases is now a much more serious matter than it has ever been before, as a large number of the parties are in the various services, as are also a goodly proportion of those who would otherwise be available to conduct their cases. As time goes on fewer barristers and solicitors are left to carry on the work of the Poor Persons Department, and delays in bringing on cases for hearing are inevitable. This has reacted unfavourably on the efficiency of men in the services, who have become burdened with an undue weight of anxiety as to their domestic position. The Law Society's report refers to the fact, already reported in these columns (*ante*, p. 1) that the Council, after consultation with the Lord Chancellor's Department and the Army Welfare Department, has established, as a war-time measure, a department under the supervision of a solicitor to undertake matrimonial cases under the Poor Persons Procedure where any of the parties are in the services. Since it was established provincial committees have asked to use the department so as to ease local pressure and to enable the remaining solicitors to deal expeditiously with the cases that arise.

New Income Tax Forms.

IT has been announced in the press that the simplified income tax form for wage-earners referred to by Sir KINGSLEY WOOD in his Budget speech is now ready, and will soon be distributed. The object of the form is to render the language of the relevant statutes intelligible to the ten million persons to whom it is estimated that the form will be distributed. There can be no doubt that it is an improvement on its predecessor, for, although there are still four pages for the particulars required by the return, the language of the explanatory note has undergone considerable simplification. An important alteration is that a statement of wages earned in the first half of the year ending on 5th October is not now required to be included, as was the case in the old form. The difficulty was that the old forms could not be sent out for completion until October, but now the authorities will rely on the figures of wages shown by employers in their wages returns. The result of the change will be to help to ensure that deduction of tax from wages will start promptly next year. Sources of income other than wages must be disclosed, as well as a wife's average weekly amount of wages, if she is earning. In no subject is clarity of language more important than in the law of income tax, but, unfortunately, few subjects are inevitably more complicated. Steps towards achieving simplicity of legal exposition to the general public form a branch of Government activity which will meet with the whole-hearted approval of the legal profession.

War Zone Courts.

SOME new matter appears in the War Zone Courts Rules, 1942 (15th May, S.R. & O., No. 934), although for the most part they reproduce the provisions of the 1940 rules for which they were substituted. Provision is now made for the setting up of a panel from which advisory members of the court can be selected in rotation or otherwise as convenient, by the clerk of the court. Where a direction has been given that an offence shall be tried in a war zone court an information may now be laid either before war zone courts or a justice of the peace. The new rules also secure that trials shall take place "as soon as conveniently practicable." Failure to provide for this was considered to be a flaw in the 1940 rules. The provision under the old rules that a warrant for arrest might be executed anywhere in the United Kingdom is now omitted from the new rules. This is probably because the jurisdiction of a war zone court does not appear to be confined to offences committed within its own area, but extends to the areas of all war zone courts, and therefore it is not necessary to have a warrant backed in another war zone area. It may also be recalled that under s. 31 (3) of the Criminal Justice Act, 1925, any warrant lawfully issued by a justice may be executed in any county or place in England or Wales outside the jurisdiction of the justice by whom it was issued. Under 2 & 3 Vict. c. 71, s. 17, a warrant issued by a metropolitan police magistrate may be executed outside his district without backing, and under 11 & 12 Vict. c. 42, English warrants may be backed in Scotland, Ireland and the Isle of Man, as well as the Channel Isles.

Recent Decisions.

In *Allchin* (*Inspector of Taxes*) v. *South Shields Corporation* on 21st May (*The Times*, 22nd May), the Court of Appeal (LORD GREENE, M.R., DU PARCQ, L.J., and LEWIS, J.) held that the South Shields Corporation Act, 1935, abolished all previous restrictions on the right of the corporation to apply the surplus profits of any one undertaking to the payment of interest on moneys borrowed for any other of its undertakings or for general purposes, and accordingly the corporation was entitled to treat the whole of its taxed profits as a fund available for the payment of interest on moneys borrowed for any purpose, and to deduct and retain tax in respect of such interest to an amount equivalent to the taxed profits.

In *In re Lindop, deceased, Lee-Barber* v. *Reynolds* on 22nd May (*The Times*, 23rd May), BENNETT, J., held that where there was medical evidence that the deaths of a husband and wife took place at the same moment of time by the blast of an exploding bomb in an air-raid, that did not definitely prove that the deaths occurred exactly simultaneously, time being infinitely divisible, and, therefore, in accordance with s. 184 of the Law of Property Act, 1925, as it was uncertain which survived the other, the younger, in this case the wife, must be deemed to have survived the elder.

Public Authorities Protection Act.

In *Mountain* v. *Bermondsey Borough Council* [1942] 1 K.B. 204, Hilbery, J., was called upon to decide whether s. 21 (1) of the Limitation Act (replacing the Public Authorities Protection Act, 1893) applied to an action against a local authority for moneys due from such authority to the person appointed registration officer for the area under the Representation of the People Act, 1918. In a reserved judgment the learned judge held that s. 21 was applicable for the reasons which will appear; it is our respectful view that this decision cannot be supported.

In 1933 the plaintiff was appointed town clerk of the borough of Bermondsey, and consequently, by s. 12 (2) of the Act of 1918, became registration officer for the area, bound to perform certain public duties laid down by the Act. Section 15 (1) of the same Act provides that the expenses properly incurred by a registration officer in the performance of his duties, including reasonable charges for his trouble, "shall be paid by the council whose clerk the registration officer is . . . out of the borough fund." In 1933 the plaintiff claimed those expenses, but his claim was rejected, the defendants contending that the salary which they had agreed to pay him was intended to include those expenses. Each subsequent year the plaintiff made a fresh claim, but the question never reached a decision. Finally, at a date over twelve months from the date on which he completed his work on the register for 1939, the plaintiff issued his writ, claiming £986 as expenses incurred by him as registration officer from 1933 to 1939 inclusive. The defendants pleaded s. 21 (1) of the Limitation Act, 1939.

That section re-enacts, with no effective alteration, save that the limitation period is increased from six months to twelve months, the provision long known as the Public Authorities Protection Act, 1893. Section 21 is as follows:—

> "No action shall be brought against any person for any act done in pursuance, or execution or intended execution of any Act of Parliament or of any public duty or authority, or in respect of any neglect or default in the execution of any such act, duty or authority, unless it is commenced before the expiration of one year from the date on which the cause of action accrued."

There follows a proviso which is not mentioned at all in the report of *Mountain* v. *Bermondsey B.C.*, but which appears to be most material to the view taken by the court: "Provided that where the act, neglect or default is a continuing one, no cause of action in respect thereof shall be deemed to have accrued for the purposes of this subsection, until the act, neglect or default has ceased."

Section 21 of the Limitation Act, and its predecessor, have given rise to many vexed questions as to what classes of proceeding are thereby affected. Of these, the most famous is *Bradford Corporation* v. *Myers* [1916] 1 A.C. 242, where a distinction was taken between acts required of local authorities by statute (which are protected) and acts done voluntarily, but *intra vires*, by the local authority (which are not necessarily protected). Some play seems to have been made with that decision, which does not appear to us to be relevant. The gist of the judgment of Hilbery, J., is contained in the following passage (at p. 207): "It appears to me to be plain that the plaintiff's claim is based on the statutory duty imposed on the defendants to pay the fees in question as part of the registration officer's expenses under the Registration of the People Act, 1918, s. 15, *and the defendants' neglect or default in the execution of that duty.* The plaintiff cannot and does not point to any other basis of legal responsibility on the part of the defendants. The fees are only payable by the defendants because the statute enacts that the plaintiff, as the registration officer under the Act, shall be entitled to them for doing the work imposed on him by the Act. The work was not done at the express or implied request of the defendants, nor under or as incidental to any contract with the defendants by which the plaintiff undertook to do the work for them. It was done in discharge of a public duty imposed on the plaintiff by the Representation of the People Act, 1918, under pain of penalties if he did not perform it. The defendants could not therefore be under any legal duty to pay those fees apart from the duty imposed on them as a public authority by the Representation of the People Act, 1918, s. 15. The section in express terms imposes on the defendants a statutory duty to pay . . . those fees. It follows that the cause of action on which the plaintiff must rely is *the defendant's neglect* to perform this statutory duty to pay."

Disregarding the words which we have put in italics, this statement is, in our respectful view, precisely accurate, and leads to a result entirely different from that at which the learned judge arrived. Section 15 of the Act of 1918 imposes a duty to pay. The cause of action is that section itself. The action accrues for such sum at the moment when that sum was incurred, entirely apart from any neglect on the part of the local authority. The resultant action is an action to recover money recoverable by virtue of an enactment precisely as in all other cases of money so made recoverable, as, for example, an action to recover money recoverable by virtue of the Truck Acts (see *Pratt* v. *Cook, Son and Co. (St. Paul's), Ltd.* [1938] 2 K.B. 51; [1939] 1 K.B. 364; [1940] A.C. 437). The enactment and the enactment alone is the cause of action, for no action could have been brought at all in the absence of s. 15, and the cause of action was complete at a date when there could be no suggestion of neglect or default by the person liable to pay (cf. *Cork and Bandon Railway* v. *Goode* (1853), 13 C.B. 827; and *Talory* v. *Jackson* (1638), Cro. Car. 513). In our view, therefore, the learned judge was in error in introducing as part of the cause of action the element of "neglect" or "default," which was not a necessary, or even a relevant, part of the plaintiff's case. Once having raised that point, he proceeded to hold that s. 21 of the Limitation Act operated to bar the plaintiff, inasmuch as that section provides a one-year period for action founded on the defendant's neglect or default in the performance of a duty imposed (as this duty was) by statute. But even on this premise, we submit that the decision actually reached, viz., that this particular plaintiff's action was barred, does not follow. For, if the cause of action was the neglect to pay, the neglect was continuing right down to the date of action brought, with the consequence that the proviso to s. 21 (1) would operate. That proviso, set out above, lays down that where the neglect or default is a continuing one, no cause of action shall be deemed for the purposes of s. 21 (1) to have accrued until the neglect or default has ceased. Consequently, on the learned judge's own premise, the correct result should, in our submission, have been that the plaintiff should have succeeded (so far as no provision other than s. 21 barred any part of his action) on the totality of his claim, since time had not run at all under s. 21. It is therefore extremely curious that neither the learned judge nor any of the counsel concerned are reported as having referred to the proviso to s. 21.

But in our view the neglect, continuing or otherwise, was no part of the cause of action. The cause of action was s. 15 of the Act of 1918, and the money was money recoverable by virtue of an enactment. Since a statute is a specialty, actions upon statutes were governed, before 1st July, 1940, by the provisions relating to actions upon specialties, and were subject to a twenty-year period. On that date, however, two changes were made by the Limitation Act, 1939. First, there was substituted for the old sections enacting the twenty-year period for specialty debts a new provision, s. 2 (3) of the Act of 1939, under which "An action upon a specialty shall not be brought after the expiration of *twelve* years from the date on which the cause of action accrued: Provided that this subsection shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Act." Learned counsel for the plaintiff are reported as having contended that the entirety of the plaintiff's claim was recoverable on the ground that the twelve-year period prescribed by s. 2 (3) was applicable. Hilbery, J., however, declined to accept this argument, pointing out that s. 2 (3) does not apply where the Act provides a shorter period, and that in his view the applicable shorter period here was the one-year period of s. 21. All those concerned seem to have thought that the choice was between s. 2 (3) and s. 21 (1). As we have shown, it seems certain that s. 21 (1) does not apply: it would not be correct, however, to say that s. 2 (3) therefore does apply. It appears to have been overlooked that one class of money claim upon specialty is expressly excluded from s. 2 (3) by s. 2 (1) (*d*), which applies a six-year period to "actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture . . ." It is to s. 2 (1) (*d*) that the proviso to s. 2 (3) regarding shorter periods primarily refers. We thus arrive at what is, in our opinion, the correct result of *Mountain* v. *Bermondsey Borough Council*. The action was one wholly founded on statute. It was one to recover money made recoverable by statute. It was not for neglect or default in performing a statutory duty, as the cause of action was complete apart from neglect or default. Therefore s. 21 did not apply, but the ordinary provision dealing with this class of action on specialty did apply. That was not s. 2 (3), but s. 2 (1) (*d*). The period was therefore six years from the cause of action. There is nothing in s. 15 of the Representation of the People Act, 1918, to say that these payments are to accrue due annually or at any given interval: the section simply provides that the expenses incurred are to be recoverable. Accordingly, each such item of expense became recoverable under s. 15 of the Act of 1918 the moment when it was incurred, and the six-year period ran against the action in respect of each such item from the moment when that item first became recoverable. It is not stated in the report on what date the writ in the action was issued, but it was evidently not earlier than the beginning of 1940. Consequently, the plaintiff was too late to recover any of his expenses incurred in the year 1933. Equally, he was beyond doubt in time to recover those of 1936 to 1939 inclusive. As regards those of 1934 and 1935, the result must depend on the exact date of the issue of the writ in 1940 or 1941.

There appears of late to have been a distinct shift of emphasis in the decisions on the "Public Authorities Protection Act," the authorities concerned having succeeded in all, or almost all, the recently reported cases. In earlier days there were many instances of their failure. For example, in *Clarke* v. *Lewisham Borough Council* (1902), 1 L.G.R. 63, an action for wrongful dismissal, Bigham, J., said that "good sense" as well as the

decided cases showed that the Act was not intended to apply to any actions for breach of contract. It is true that this observation seems to have been too wide, but the same tendency was still clear in *Sharpington* v. *Fulham Guardians* [1904] 2 Ch. 449, an action for breach of contract brought against the guardians by an independent contractor employed by them. These decisions contrast strongly with that of Crossman, J., in *Compton* v. *West Ham Borough Council* [1939] Ch. 771, where a servant of the local authority was unable to recover arrears of salary more than six months old (six months being then the period). The privilege accorded by s. 21 to the numerous persons who are in present circumstances occupied in executing Acts of Parliament or doing public duties is an anomalous one, which has been usually justified by the desirability of relieving local budgets from the necessity to make provision against stale claims for unknown sums of possible unliquidated damages for tort. There is no obvious reason to suppose that it is politic to construe s. 21 leniently towards public authorities, particularly so far as concerns sums of wages and quasi-wages, whose quantum is perfectly ascertained and which the authority concerned could perfectly well have paid as soon as they fell due.

A Conveyancer's Diary.

Law of Property Act, s. 40.

FROM time to time one is confronted with a case raising a point so elementary that one stands in danger of overlooking it. I have found it a salutary practice when this kind of thing occurs to refresh my memory not only on the particular point but about the subject of which it forms part. Not so long ago I had to advise whether a contract for the sale of land was enforceable by a purchaser: it transpired that there was no written record of the contract except a very sketchy document drawn up by the vendor himself. Apart from other defects, this instrument bore only the signature of the purchaser. It occurred to me, though not, perhaps, as early as it should that this fact was fatal to any action brought by the purchaser, assuming, as one almost must, that the vendor would "plead the Statute of Frauds," now, more correctly, s. 40 of the Law of Property Act, 1925. The rule now embodied in that provision was almost the first rule of law that we all learnt, and so it may, perhaps, be justifiable to look at it once again.

It is fundamental in English law that no particular solemnities are necessary to give to an agreement the status of a legal contract. Certain factors are however necessary. First, there must be an intention to create a legal obligation: an accepted invitation to dinner does not form a legal contract. Second, there must be offer and acceptance. Third, there must be consideration. These three factors alone will form a contract, without any requirement as to form. Form is material to validity in one class of case only, namely, where the alleged contract is a contract under seal and where, for one reason or another, the plaintiff could not succeed on the contract were it not under seal. The most important case of that sort is where there is no consideration, since a contract is valid at law (though not necessarily enforceable in equity) if it is a voluntary contract under seal. But it cannot too often be insisted that a contract not under seal is a valid contract (apart from such vitiating factors as illegality) regardless of form.

It does not, however, follow that every valid contract is enforceable by action. For example, a contract may perfectly well be valid though all actions on it be statute-barred. Thus, it is not a devastavit for a personal representative to pay his testator's statute-barred debts, for they remain owing though no one can recover them by action. Another and more important class of contracts which may be valid but not enforceable are those falling within s. 4 of the Statute of Frauds. Briefly, the classes of contract affected by that section are those by personal representatives to be personally answerable for damages, contracts of guarantee, contracts in consideration of marriage, contracts not to be performed within a year from the date of the agreement, and contracts for the sale of interests in land. The words in the Statute of Frauds concerning the last category are now repealed, and such cases are provided for by s. 40 of the Law of Property Act, 1925. That rearrangement has not affected the substance of the matter and all five classes remain subject to exactly the same considerations. It will, however, be convenient here to deal only with s. 40, which enacts as follows:—

> "(1) No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised.
>
> "(2) This section applies to contracts whether made before or after the commencement of this Act and does not affect the law relating to part performance or sales by the court."

These words and their predecessors have been the subject of centuries of minute construction and no uninstructed person reading them would have much chance of guessing correctly how they would apply to most practical cases. Unless certain conditions are fulfilled, the contract may not be enforced by action. But it remains valid; moreover, where there is such a contract and, in reliance on it, the parties have changed their positions in such a way as to constitute part performance as recognised in equity, it is possible to succeed in an action for specific performance, though not in an action for damages. Again, the contract may be valid as against one whose duly authorised agent signs it on his behalf; but if the agent exceeds his authority, as by purporting to commit his principal to a price not authorised by the principal, the memorandum is not valid, though the agent may be liable on a breach of warranty of authority.

But the most vexed question of all is what constitutes a sufficient "memorandum or note" within the section, a difficulty of which the wording of the section gives little hint. The "memorandum or note" is only a memorandum or note. It is not necessary that the effective act of agreement should itself be in writing. The agreement may be oral, and if either party commits himself to written evidence of the oral agreement that party can be sued upon the agreement, while the party who has not so committed himself cannot be sued.

The memorandum or note must cover certain points. It must identify both parties: on this point the most recent case is *Fay* v. *Miller, Wilkins & Co.* [1941] Ch. 360, where the vendor was held to be sufficiently identified by the statement that he would convey as personal representative. On the other hand, "the vendor" is not a sufficient identification (*Potter* v. *Duffield*, L.R. 18 Eq. 4). The property must also be described in such a way as to identify it. On both these points there is much learning, which is of a subtlety sufficient to make it desirable that the cases should be looked up every time that the point is material. The price must also be stated or indicated in such a way as to make the inference as to its amount irresistible. If the subject-matter is a lease, the duration of the term and the date from which it runs must be clearly noted down. And, of course, if the contract is one to create a lease the rent must be specified.

There are thus half a dozen points at least on which a prospective plaintiff may come to grief, and, by the same token there are half a dozen possible loopholes for which the advisers of a prospective defendant should look. Moreover, it must never be forgotten that wherever a case falls within s. 40 (or s. 4 of the Statute of Frauds) those requirements have to be covered *in addition to* those necessary to the validity of every contract. Of course, if there is a sufficient memorandum the contract can hardly be bad for lack of consideration, since the memorandum is a bad one if it does not show a price, and the statement of a price necessarily involves the presence of consideration. But the other two basic factors must be present—offer and acceptance, and intention to create legal relations. How often one looks through a bundle of correspondence which clearly identifies both parties and the property and shows a price mentioned by one of them, but where there has been no unequivocal acceptance of an offer. In such a case there may well be an apparently sufficient memorandum but no contract, since the parties were never *ad idem*. Again, it is frequent to find correspondence showing all the points needful for a memorandum *and* that the parties were *ad idem*, but forming no contract because either the offer, or the acceptance, or both, were made "subject to contract." Where that is so there is no intention to create a legal obligation until the execution of a formal contract, and until then there is no legal nexus at all. It is, of course, a most difficult matter to know in conducting a negotiation whether to make it "subject to contract" or not. On the whole I am inclined to think that the construction of bundles of correspondence about dealings in land is generally so difficult and the possible flaws are so many that it is in the interest of both parties to make the negotiation subject to formal contract, unless one party has some very pressing reason to want there to be early legal ties; and where that is so, the other party may well be in less of a hurry.

Obituary.

MR. T. LINDSEY.

Mr. Thomas Lindsey, solicitor, of Darwen, died on Saturday, 16th May, aged sixty-one. He was admitted in 1910.

MR. A. MACBETH.

Mr. Andrew Macbeth, solicitor, of Wirksworth, died on Saturday, 30th May. He was admitted in 1897.

MR. G. W. MARKS.

Mr. George Woodfine Marks, O.B.E., town clerk and Chief A.R.P. Controller of Canterbury, was killed in the recent enemy air attack on that city. Mr. Marks was admitted in 1920.

MR. H. G. WEDD.

Mr. Henry George Wedd, solicitor, of Messrs. Carne-Hill and Wedd, of Langport, died on Thursday, 14th May, aged seventy-two. He was admitted in 1897.

Captain Frederick Christopher Benn, of Intelligence Corps, barrister-at-law, left £23,573, with net personalty £23,559.

Landlord and Tenant Notebook.

Small Tenements Recovery Act, 1838, Procedure applied by Housing Act, 1936.

WHEN *R.* v. *Snell, ex parte Marylebone Borough Council** was first reported in *The Times* of 18th April last, I decided, having read the report, to await a more detailed account of the proceedings and arguments before discussing the case in the "Notebook." On 8th May a full report was published in 58 T.L.R. 236, and the judgment of Cassels, J., given in full, was worth waiting for, if only because of the illustrations of the position given therein.

The proceeding was an application for a mandamus to direct a Metropolitan magistrate to hear and determine a complaint made by the applicants against a tenant for neglecting to give up a flat let to her. The complaint was made under the Small Tenements Recovery Act, 1838, and the magistrate held that, in spite of the provisions of the Housing Act, 1936, s. 156 (2), he had no jurisdiction to try the case, as the rent exceeded the £20 a year limit prescribed by Small Tenements Recovery Act, 1838.

At the hearing before the respondent, the applicants' solicitor had formally opened his case, mentioning that he would prove the letting, the notice to quit, etc., and that the occupants of the flat were a nuisance to their neighbours. According to both reports mentioned, he went on to submit that the court had jurisdiction, and it seems safe to assume that if an objection was taken at that stage it was taken by the court and not by the tenant (a shorter report, 193 L.T.Jo. 172, does not refer to any submission at all). At all events, no evidence was actually taken at the police court; and when Cassels, J., describes the flat as "let to a tenant proved by the evidence to be capable, by reason of her alleged conduct, of being presented to the court as a nuisance," it is clear that the "evidence" is that before the Divisional Court in the form of the learned magistrate's affidavit.

The learned judge summed up the conflicting arguments. That of the council was based upon two provisions of the Housing Act, 1936: s. 83 (1) "the general management . . . of houses provided by a local authority under this Part of this Act shall be vested in and exercised by the authority . . ." and the above-mentioned s. 156 (2): "Where a local authority, for the purpose of exercising their powers under any enactment relating to the housing of the working classes, require possession of any building or any part of a building of which they are the owners, then, whatever may be the value or rent of the building, etc., they may obtain possession thereof under the Small Tenements Recovery Act, 1838, as in the cases therein provided for, at any time after the tenancy of the occupier has expired, or has been determined."

The respondent pointed to the mandatory nature of s. 1 of S.T.R.A., 1838. If the tenant or occupier does not show to the satisfaction of the justices reasonable cause why possession should not be given—so runs the section (some otiose verbiage omitted)—it shall be lawful for the landlord to give proof, etc., and for the justices to issue a warrant to the constables and peace officers commanding them, within a period therein named, not less than twenty-one nor more than thirty clear days from the date of such warrant to enter into the premises and give possession to such landlord. The argument advanced for the respondent was that the absence of discretion in the matter of time showed that the Legislature never intended, when enacting its Housing Act, to confer jurisdiction in such a case as the present, placing local authorities in a better position than that of a private landlord.

The answer to this, the learned judge pointed out, was to be found in the Increase of Rent Act, 1920, s. 5, specially extending the period of the warrant to three months and authorising further extensions. Local authorities might, the learned judge observed, in effect find themselves faced by courts prepared to exercise their discretion and adjourn cases for three months over and over again.

Two comments might perhaps be usefully made on these observations. One is that there was a period when many "council houses" were decontrolled. The other is the probable applicability of the authority of *Sheffield Corporation* v. *Luxford* [1929] 2 K.B. 180, in which a county court judge suspended for twelve months an order for possession against the tenant of a council house which had never been controlled, conditionally on rent being paid and premises not being used as a shop. This, it was held by the Divisional Court, really turned the defendant from a weekly tenant into a tenant for a year certain; it created a new tenancy against the will of the landlords; and such a postponement was not, unless there were circumstances other than those which had appeared, permissible in exercising discretion under the County Courts Act.

Cassels, J., proceeded to hold that in requiring possession the applicants were, in the words of the Housing Act, 1939, s. 83 (1), set out above, exercising management. The learned judge's reasoning was as follows: Management includes letting, letting pre-supposes a tenant. And by managing an estate for the accommodation of members of the working classes, the learned judge held the council were carrying out the purposes of the Act. Consequently, so long as the purpose for which the local authority required possession was a purpose within the Act, namely, *in order to let to another member of the working classes*, their requirement came within the general management of houses referred in the subsection.

But before arriving at this conclusion, and after dealing with the meaning of "management" as mentioned above, the learned judge gave some instances of why a local authority might require possession. These were: because the tenant has not paid his rent; because he is a nuisance; because he has ceased to be a member of the working classes through inheriting a large sum of money and is thus no longer qualified to occupy the premises.

It may perhaps be said that these illustrations do not all fit in within the conclusion. The first two certainly accord with the principles of "good estate management" and would justify the proposition that in requiring possession for such reasons the authority required possession for the statutory purposes. But it will be observed that all three are cases of "scientific" explanation of the requiring of possession, while the conclusion arrived at demands something different, a "teleological" explanation. Hence, if the matter rested there, one might one day come across a case in which notice was given to a bad tenant, but there was no intention to let to a working-class tenant once possession was recovered.

However, this difficulty may be disposed of by the final passage of the judgment: "if it could have been contended that the council did not require possession of these premises for the purpose of letting to another member of the working classes, but for that of erecting a school or widening a road or for some other purpose not included in the Housing Act, the magistrate would have been entitled to hold that he had no jurisdiction. That, however, was not the case here," etc. This is less emphatic than the headnote, which runs: "it would have been otherwise if it could have been *shown* that," etc., but the decision appears to be that objections to the jurisdiction in these cases must be taken by the respondent to the complaint, who must prove his allegations. But I won't put it higher than "appears to be."

*Reported p. 161, *infra*.

Correspondence.

Nominee Shareholders.

Sir,—Referring to the "Current Topics" on the above in your issues of 9th and 16th May, 1942 (pp. 128, 135), it may be of interest to your readers to know how the question is managed in some other countries. In Belgium and France the law has made punishable the voting of a nominee shareholder. In Sweden a minority of 10 per cent. of the capital represented at the meeting of shareholders has the right to ask that every shareholder who is present at the meeting assures in writing that he is not a nominee shareholder and that he did not acquire the shares to evade any restrictions on the voting right and that he did not take them subject to an obligation to restore them after having voted with them. In Germany the voting of a nominee shareholder is allowed with two exceptions. Generally, voting with shares lent for remuneration is punishable; in this case also the lender is punishable. Furthermore, banks are not allowed to vote as nominee shareholders with deposited shares; also not if they have not given any remuneration; they are only allowed if permission is given in writing to a certain bank, and is not combined with any other declaration; such permission is only valid for fifteen months and can be revoked at any time.

In Britain the importance of the question is not confined to the right of voting. Here it is considered as a big public interest generally to know who are the real shareholders. Therefore in Britain the register of members is open for the inspection not only of members but also of any other person (s. 98 of the Companies Act of 1929). The Legislature took care to provide the register as the "means of enabling persons dealing with the company to know to whom and to what they might trust" (*Oakes* v. *Turquand*, L.R. 2 H.L. 366). But in the register itself there are no such means in the case of the nominal shareholders. In Switzerland the charter of the company can give it the discretion of refusing to register a transfer of shares without giving any reasons for refusal. It is evident that this law, with which English law agrees, if the articles allow it, may help only in very few cases.

Oxford. HUGO HORRWITZ.
29th May.

Notes.

At the annual general meeting of the Legal & General Assurance Society, Ltd., to be held on the 16th June next, the directors will recommend payment of a final dividend for the year 1941 at the rate of 2s. per share less income tax, payable on the 1st July, 1942. (The same rate as las year.)

Mr. Richard Durant Trotter has been re-elected Chairman, and Mr. H. A. Trotter Deputy-Chairman, of the Alliance Assurance Co., Ltd. Mr. Anthony de Rothschild has been elected a director.

Mr. B. A. Collington, one of the best-known magistrates' clerks in London, retired on Saturday last after thirty-six years' service. For the last ten years he has been at Marlborough Street Police Court.

To-day and Yesterday.

LEGAL CALENDAR.

1 June.—From 1720 to 1746 it was the regular practice in Buckinghamshire to hold the Summer Assize at Buckingham and the Winter Assize at Aylesbury. In 1747 both were held at the latter place, and accordingly in the following year an Act was passed reciting how the usage had been "unnecessarily broken in upon" and enacting that from and after the 1st June, 1748, the Summer Assize should be held at Buckingham and at no other place "provided always that if at any time the said town of Buckingham shall be wholly unfit for holding the Assizes there by accident of fire or by means of any contagious or epidemical distemper or by any other unforeseen cause or exigency" the Chief Justice might appoint another convenient place within the county.

2 June.—In 1891 Sir Francis Jeune was appointed a judge of the Probate, Divorce and Admiralty Division in place of Sir Charles Butt, promoted to preside over it, but the chief weight of the work fell on to his shoulders, for Butt was taken ill soon after and died in the following year. Till then the position of President had involved some ambiguities of status and an Act was now passed creating a definite office with the judicial rank of one of the Lords Justices of Appeal. Jeune, who was appointed President on the 2nd June, 1892, was the first holder of this office. His tenure of it lasted for thirteen years and was both distinguished and successful by reason of his soundness as a lawyer, his strength of character, his patience and his courtesy. In the three branches of his work he secured the confidence of those who practised before him.

3 June.—Tom Cox, the handsome highwayman, was three times tried for his life before he was condemned to death at the Old Bailey and hanged at Tyburn on the 3rd June, 1691, for robbing a farmer of twenty pounds. The youngest son of a Dorset gentleman, he squandered his patrimony in riotous living and then took to the road. Besides his three acquittals he had another chance of redeeming himself when a young lady of Worcester fell in love with him and married him, bringing him a small fortune. He squandered it, broke her heart, and took to the road again. Once he held up the King's jester, Killigrew, who asked if he were in earnest, to which he replied: "Yes, by God, am I! for though you live by jesting, I can't." Another time he robbed a New Inn attorney of 150 guineas, lecturing him on his corrupt practices. He lived extravagantly in Newgate while awaiting trial, and at the gallows refused to pray with the chaplain, kicking him and the executioner out of the cart. He was in his twenty-sixth year.

4 June.—Serjeant Fountaine ("Turncoat Fountaine") died on the 4th June, 1671. When the great Civil War broke out he was already "a lawyer of eminency," and at first he was loyal enough to the King to suffer imprisonment at the hands of the Parliament for refusing to contribute to the subscription demanded by them. Later he was banished from London and joined the Royalists, but as their cause declined he was among those who would have raised a third army to impose peace on the combatants. Eventually he deserted Oxford and went over to the enemy. By 1652 he had lived down the suspicion of the authorities sufficiently to be appointed to a law reform committee to consider what inconveniences existed in the law and suggest remedies. In 1658, under Richard Cromwell, he became a serjeant, and in the following year he was one of the Commissioners of the Great Seal of the Commonwealth, holding it till the King's Great Seal was restored with the monarchy. He then became a Royalist again, was confirmed in the degree of the coif and practised till his death.

5 June.—In 1797 Mr. Sydney Fryer while walking with his sister at Islington was robbed and fatally shot by three men. Subsequently she identified Martin Clench and James Mackley as two of the assailants. They were convicted, after a trial which they admitted was fair, and on the 5th June they were hanged outside Newgate, though they had always strongly asserted their innocence. There was an accident at the execution, the platform of the drop going down prematurely and giving two attendant clergymen, the executioner and his assistant a nasty fall. It turned out afterwards that the two were unjustly hanged, for the three murderers separately confessed the crime while under sentence of death for other offences.

6 June.—In those delightful circuit reminiscences of his, Lord Justice MacKinnon tells how on the 6th June, 1935, he went to Haverfordwest for the first time for ten years and the judge's lodgings gave him an agreeable surprise. He says, "I had memories of the house there as almost the worst I ever had to stay in. So it was a great relief to find that it had been given up, and a very pleasant house, Glenafon, a little way outside the town, had been substituted. It was as good a house as one could wish, and the garden was very pleasant." The old house had had no bathroom and was illuminated by gas brackets with mid-Victorian burners. A protest to the Under-Sheriff had only elicited the reply: "Why, my lord, this is the town house of the Philippses of Picton Castle!"

7 June.—Edwin James, the son of a London solicitor, came to the Bar, and through the interest of his father attained a considerable junior practice, civil and criminal; though deficient in law, he earned conspicuous success as a common jury advocate, having a knack of appealing to the ignorances and prejudices of his hearers. He took silk in 1853, became Recorder of Brighton in 1855, and entered Parliament in 1859. The £7,000 a year which he was making did not, however, suffice for his needs, and he ran heavily into debt, his liabilities exceeding £100,000. In 1861 he resigned from Parliament and from his clubs, and an execution took effect at his house in Berkeley Square. Grave charges were made against him in his professional character, and on the 7th June the Inner Temple Benchers commenced an inquiry into his conduct. It was proved that he had involved a young nobleman in debts amounting to £35,000 for his own benefit, that he had defrauded a solicitor of £20,000 and that he had taken money from a defendant to let him off easily in cross-examination. He was disbarred and expelled from the Inn.

WINE SUBSTITUTE.

One of those gossip writers recently reported that he had seen Mr. Maurice Healy, K.C., drinking a pint of bitter at lunch. Asked how he reconciled this with his philosophy of wine drinking, the gastronomic leader of the Bar replied: "I don't. I submit to the standard of the age." It would be depreciation indeed should the lawyers for ever resign themselves to the ponderous influences of beer in place of the illuminating effects of wine, which might drift into a legendary remoteness like that port wine formerly by custom regularly presented by the Dukes of Buccleuch to the judge's lodging at Lancaster. Once there was hardly an English judge who could not have played the part of that Paris magistrate, an unusually good judge of wine, who, having before him a dispute as to the value of some champagne, short-circuited the difficulty of expert evidence by telling the merchant to send him a case of the subject-matter for a personal trial; the test proved unfavourable. Certainly Mr. Justice Simonds, when a chemical engineer, describing an invention for filtering liquids, said that he had seen it turn port wine into water, observed that it seemed a very wrong use for such an invention. During the last war the wine famine was not anything like so acute. A story is told of a dinner party at which Lord Mersey was host. A young officer expressed surprise at being given hock to drink. Lord Mersey asked why. "Because it's a German wine, sir," "Well, we intern it, don't we?" When this war is over many may echo the words of Mr. Justice Manisty after his doctor, who had forbidden him port for a while, allowed him to return to it: "That is all very well, but how about the arrears?"

War Legislation.

STATUTORY RULES AND ORDERS, 1942.

E.P. 919–921 (as one document). **Civilian Clothing** (Restrictions) (No. 2), (No. 4) and (No. 5) Orders, 1942. Gen. Licences, May 14.

E.P. 945. **Coal Supply Order**, May 15.

No. 981/L.14. **County Court, England.** County Court Funds Rules, May 22.

E.P. 961. **Defence** (General) Regs., 1939. Order in Council, May 22, amending Regs. 18, 27A, 58AB, 62 and the Third Schedule, and adding Regs. 1C, 20AB, 45AB, 47AB, 50A, 55B, 73A and 74A and revoking Reg. 18E.

E.P. 963. Defence (Recovery of Fines) Regs., 1942, Order in Council, May 22.

E.P. 964 Defence Regulations (Employment Abroad) Enforcement Order in Council, May 22.

No. 929. **Export of Goods** (Control) (No. 24) Order, May 19.

No. 987 **Fire Services** (Emer. Provs.). National Fire Service (General) (No. 4) Regs., May 20.

E.P. 937. **Food** (Restriction on Dealings) Order, 1941. Amendment Order, May 18, prescribing an appointed day and granting Gen. Licences.

E.P. 948. Food Transport Order, 1941. Directions, May 20.

E.P. 972. **Fuel and Lighting** (Coal) Order, 1941, Gen. Direction (Restriction of Supplies) No. 3, May 22.

E.P. 962. **Home Guard.** Order in Council, May 22, extending the Defence (Home Guard) Regs., 1940, to the Isle of Man.

No. 932. **Import Duties** (Exemptions) (No. 3) Order, May 21.

E.P. 882. **Making of Civilian Clothing** (Restrictions) (No. 9) Order, May 14.

No. 959/L.13. **Supreme Court, England.** Procedure. Matrimonial Causes (Decree Absolute) Rules, May 20.

No. 982/L.15. Supreme Court, England. Procedure. Rules of the Supreme Court (No. 2), May 22.

No. 983/L.16. Supreme Court, England. Supreme Court Funds (No. 1) Rules, May 22.

No. 912. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 8) Order, May 19.

No. 966. **United States of America** (Visiting Forces) Order in Council, May 22.

E.P. 934/L.12. **War Zone Courts Rules**, May 15.

Notes of Cases.

COURT OF APPEAL.

Bank Polski *v.* K. J. Mulder & Co.

Lord Greene, M.R., MacKinnon and Goddard, L.JJ. 27th February, 1942.

Bills of exchange accepted in Poland and payable in Netherlands currency—Place of payment specified as, but not only as, Amsterdam—Payment demanded in London—Acceptors liable—Bills of Exchange Act, 1882 (45 & 46 *Vict. c.* 61), *ss.* 19, 45, 52.

Appeal from a decision of Tucker, J.

The plaintiff bank were the holders and indorsees of five bills of exchange, all in the same form, of which the defendant firm were the acceptors. The bills were drawn by a firm in Poland on the defendants in London, and were stated to be payable in Dutch florins at the Twentsche Bank, Amsterdam. The plaintiffs demanded payment of the bills in August, 1940, in London, but the defendants refused it, contending that by Dutch and/or English law presentation at the named bank in Amsterdam, followed by protest in the event of non-payment, was necessary in order to charge the defendants as acceptors. By s. 19 of the Bills of Exchange Act, 1882, "(1) An acceptance is either (*a*) general or (*b*) qualified. (2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. In particular an acceptance is qualified which is . . . (*c*) local, that is to say, an acceptance to pay only at a particular specified place. An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere . . ." Tucker, J., held that the acceptance of the bills was general and not local, there being no statement that the bills were payable at the named bank and not elsewhere. Presentment and payment in Holland was one of the methods whereby the acceptors' obligation could be performed. Yet, if presentment were nevertheless effected in London, English law applied and the acceptors were liable on the bills. English law governed the case because the contracts constituted by the bills were not ones the performance of which by the acceptors must take place in a foreign country. He therefore gave judgment for the plaintiffs for the sterling equivalent of the sum due on the bills. The defendants appealed.

LORD GREENE, M.R., said that, all other points taken before Tucker, J., having now been abandoned, the only question remaining for decision was whether or not the acceptance of the bills was local within the meaning of s. 19 (1). On the face of it, it clearly was not so. It was, however, argued that the combined facts that the place specified for payment was in Holland and that the bills were payable in Netherlands currency indicated that the parties intended payment to be made at, and only at, the specified place. It was sought to reinforce that argument by reference to the fact that the drawer had himself specified the place of payment by writing it on the face of the bill before it was accepted. That was, in his (his lordship's) opinion, immaterial. The fact that the place of payment was already specified in the bill when the drawee came to accept it did not make that specifying any the less a term of the acceptance. The stipulation of the country and currency in which the bills were to be paid could not amount to the express stipulation which s. 19 (2) required in order that an acceptance might be qualified and not general. The necessary express stipulation could not be deduced from any of the circumstances on which the defendants relied, and the appeal must be dismissed.

MACKINNON and GODDARD, L.JJ., agreed.

COUNSEL: *Wallington*, K.C., and *Valentine Holmes*; *H. G. Robertson*.

SOLICITORS: *Herbert Smith*; *Slaughter & May*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION.

In re Woolgar; Woolgar *v.* Hopkins.

Simonds, J. 21st April, 1942.

Administration—Alimony—Whether arrears recoverable against husband's estate—Matrimonial Causes Rules, 1937, *r.* 81.

Adjourned summons.

By an order of the Probate, Divorce and Admiralty Division dated the 25th January, 1928, W was ordered to pay to his wife, the plaintiff, permanent alimony at the rate of £120 per annum. W died on the 9th March, 1940, and his will was proved by his executor on the 12th December, 1941. In 1929 and 1935 the plaintiff took bankruptcy proceedings in order to obtain the alimony due. It was admitted that, in view of the decision in *Morse* v. *Muir* [1939] 2 K.B. 106; 83 SOL. J. 379, that the arrears covered by the bankruptcy proceedings were no longer enforceable. There were, however, other arrears which had not been the subject of bankruptcy proceedings and the plaintiff by this summons claimed administration of her husband's estate as a creditor.

SIMONDS, J., said that the question was whether a person to whom arrears of alimony was due was able to maintain a claim for administration as a creditor. On this two points arose: On the first there was a conflict of judicial authority. *In re Stillwell* [1916] 1 Ch. 365, decided that a widow might recover against her husband's estate, if solvent, any arrears of alimony due at his death. The same question came before Luxmoore, J., in *In re Hedderwick, Morton* v. *Brinsley* [1933] Ch. 669, who reviewed the authorities and came to the conclusion that an order for alimony enforceable during the testator's lifetime ceased to be so upon his death. The person entitled to alimony was not entitled to recover against the testator's estate, whether the estate was solvent or insolvent. He, the learned judge, was content to adopt both the reasoning and conclusion of Luxmoore, J., and hold that the arrears were not recoverable, and consequently the person who claimed them could not maintain an action for administration as a creditor. The further point arose whether an alteration had been made by the Matrimonial Causes Rules, 1937. The suggestion was that r. 81, a new rule, had altered the position. He had come to the conclusion that r. 81 had not made any difference in this respect and the decision of Luxmoore, J., must be regarded as an authority. Accordingly, he must dismiss the application.

COUNSEL: *Watmough*; *Vanneck*.

SOLICITORS: *Alfred Nisbet & Son*; *Radcliffes & Co.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re Moorgate Estates, Ltd.
Moorgate Estates, Ltd. *v.* Trower.

Uthwatt, J. 21st April, 1942.

Mortgage—Covenant to insure against war damage—Impossibility of performance—Order enforcing mortgagees' rights by reason of the breach of covenant—Jurisdiction to grant relief—Landlord and Tenant (War Damage) (Amendment) Act, 1941 (4 & 5 *Geo.* 6, *c.* 41), *s.* 11.

Adjourned summonses.

The Landlord and Tenant (War Damage) (Amendment) Act, 1941, s. 11, provides: "Any express obligation to insure land against war damage shall be void and be deemed always to have been void . . . Provided that the foregoing provision shall not affect the exercise before the passing of this Act of any right or remedy arising in consequence of a failure to perform an obligation to insure against war damage, but the court may, on the application of any person prejudiced by the exercise of any such right or remedy, grant such relief as it thinks just." By a registered charge dated the 25th March, 1936, the plaintiff company mortgaged certain premises to the defendant to secure £155,000. They thereby covenanted to insure the premises against war damage. The defendants agreed, if the power of sale had not become exercisable, not to call in the principal moneys secured until 1946. The power of sale was to be exercisable *inter alia* if the plaintiffs failed to perform any of their covenants. It was possible for a short time to insure against war damage, but it subsequently became impossible. Thereupon the defendants served a notice calling in the principal moneys. The plaintiffs started an action against the defendants claiming a declaration that they were not bound to comply with that notice. The defendants counter-claimed for an account, the appointment of a receiver and possession. In that action, *Moorgate Estates, Ltd.* v. *Trower* [1940] Ch. 206, Farwell, J., held there had been a breach of the covenant. He ordered a receiver to be appointed and an account to be taken of what was due under the mortgage. The plaintiffs took out a summons in that action and a summons in the county court, which was adjourned into the High Court, both summonses being heard together, by which they claimed relief from the order of Farwell, J., under the provisions of s. 11 of the Act of 1941, which was passed after his order had been made.

UTHWATT, J., said that the first question was whether he had any jurisdiction to grant relief. If immediately after the passing of the Act the plaintiffs had appealed against Farwell, J.'s order, the Court of Appeal would have been bound to have regard to s. 11. The effect of the qualifying words at the end of the section was to give the court a discretion to grant relief. That must mean to give such relief as it thought just having regard to the fact that it was now known that the obligation to insure was to be deemed always to have been void. This case was one in which the court ought to exercise its discretion. No rights had been created in third parties. There had not been a foreclosure order absolute nor the exercise of the power of sale. An account had been directed and a receiver appointed. It was possible effectively to put right the position created by an alteration of the law and he would give the plaintiffs complete relief against the consequences of Farwell, J.'s judgment. He would order that the account directed should not be proceeded with and that the receiver should be discharged and the balance of moneys in his hands paid to the plaintiffs.

COUNSEL: *Wilfrid Hunt*; *Lindsay M. Jopling*.

SOLICITORS: *J. D., Langton & Passmore*; *Trower, Still & Keeling*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION.

R. *v.* Snell, *ex parte* St. Marylebone Borough Council.

Viscount Caldecote, C.J., Humphreys and Cassels, JJ. 17th April, 1942.

Local government—Housing (working classes)—Flat or housing estate—Application by authority to magistrate for possession—Jurisdiction—Small Tenements Recovery Act, 1838 (1 & 2 *Vict. c.* 74), *s.* 1—*Housing Act*, 1936 (26 *Geo.* 5, *and* 1 *Edw.* 8, *c.* 51), *ss.* 83 (1), 156 (2).

Application by St. Marylebone Borough Council for an order of *mandamus* directed to Mr. Ivan Snell, the Metropolitan magistrate sitting at St. Marylebone Police Court, to hear and determine a complaint made before him on behalf of the council against a tenant for neglecting to give up to the council possession of a tenement.

The tenant paid a weekly rent of £1. Notice to quit was given to the tenant on the 17th May, 1941, and a notice for the recovery of possession was served on her under the Small Tenements Recovery Act, 1838. The tenement in question formed part of a housing estate belonging to the council consisting of blocks of flats. The tenant was alleged to be a nuisance. There was no evidence that the flat was not required for occupation by another member of the working classes. By s. 1 of the Small Tenements Recovery Act, 1838, when a tenancy for a term of less than seven years of any premises at a rent not exceeding £20 a year has been legally determined, and the tenant neglects or refuses to give up possession, the landlord can recover possession by complaint to a court of summary jurisdiction. By s. 83 (1) of the Housing Act, 1936, local authorities are empowered to manage houses provided by them for the accommodation of the working classes. By s. 156 (2), "Where a local

authority, for the purpose of exercising their powers under any enactment relating to the housing of the working classes, require possession of any . . . part of a building of which they are owners, then, whatever may be the . . . rent of the . . . part of a building, they may obtain possession thereof under the Act of 1838." The magistrate dismissed the complaint, holding that, the rent of the premises exceeding the limit of £20 a year specified by the Act of 1838, he had no jurisdiction to entertain the matter on the ground that the facts to be proved did not establish that possession was required by the council "for the purpose of exercising their powers" within the meaning of s. 156 (2). The council accordingly now applied for an order of *mandamus*.

CASSELS, J., giving the judgment of the court, said that the question for decision, which had apparently caused trouble to local authorities for some years, was whether in circumstances like those of the present case a court of summary jurisdiction had jurisdiction to consider an application under the Small Tenements Recovery Act, 1838, for possession of premises controlled by a local authority under the Housing Act, 1936, notwithstanding that the rent payable for the premises exceeded the limit prescribed by the Act of 1838. The argument was that, if the rent exceeded that limit, the applicant council must, on such facts as could be proved here, go to the same courts as must any other landlord, and could not have recourse to a court of summary jurisdiction. The council contended that they had power to manage an estate for the accommodation of the working classes under the Housing Act, 1936, only, and that that Act gave them power to proceed under the Act of 1838 in such a case as the present. In the opinion of the court the magistrate had jurisdiction to entertain the matter. So long as the purpose for which a local authority required possession of premises was in order to let them to another member of the working classes, their requiring of it came within the general management referred to in s. 83 (1) and s. 156 (2) accordingly applied. It seemed clear that in enacting s. 156 (2) Parliament had in mind that local authorities who had recourse to courts of summary jurisdiction for the recovery of possession of tenements within the Act would be met with the Small Tenements Recovery Act. If it could have been contended that the council required possession of the flat not in order to let it to another member of the working classes, or for some purpose not covered by the Act of 1936, then the magistrate would have been entitled to hold that he had no jurisdiction. The application would be granted.

COUNSEL: *H. G. Robertson; Ryder Richardson* (for the magistrate).
SOLICITORS: *Samuel Coleman; The Treasury Solicitor.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Staddon *v.* Price.

Viscount Caldecote, C.J., Humphreys and Cassels, JJ. 23rd April, 1942.

Emergency legislation—Agriculture—Direction to make field stockproof—Field occupied for sawmill and timber storage—Business discontinued—Only part of field covered by sawmill—Intention of occupier to re-start business immaterial—Whether field "agricultural land"—Defence (General) Regulations, 1939, *regs.* 62, 100.

Appeal by case stated from a decision of Tisbury and Mere justices.

An information was preferred against the appellant at Tisbury petty sessions by the respondent, the chief executive officer of the Wiltshire War Agricultural Committee, alleging that between the 24th May, 1941, and the 2nd July, 1941, he failed to comply with a direction made on the 16th May, 1941, under reg. 62 of the Defence (General) Regulations, 1939. The direction required him to carry out specified works of management. The following facts were established at the hearing of the information: The appellant occupied a certain field at Union Hill, Tisbury. The officer wrote to the appellant on the 19th February and the 3rd March, 1941, complaining of the state of a field occupied by him, and asked that it should be stocked. On the 16th May, the field still being derelict, a direction was made under reg. 62 in respect of the whole field calling on the appellant to fence it and make it stockproof, to remove old timber wagons and other vehicles from it, to fence off the timber yard and buildings which were on it, and to stock it with cattle within seven days. The field was wet, and rushes were growing in it. It was satisfactory for grazing for about seven months of the year. By the date of the hearing most of the fencing had been carried out, but the timber wagons had not been moved, nor had the timber which was there been fenced off. The field was used partly for a timber yard and for storing timber, and had been partly used for a sawmill. Part of the field was covered by the mill itself, which, though at present unused, was still standing. The field was derelict in May, 1941, and was still not stockproof in June. A man owning cattle was ready to stock the field in May and June. Until a few years ago the appellant carried on business as a timber merchant in the field, and he intended to start business there again in a few weeks. The justices found that the mill occupied part of the field, the rest of it being used for storing the timber, which was worth a few hundred pounds. It was contended for the appellant that, as the field was partly used for the business of a timber merchant and partly for the storage of timber, a sawmill being erected on it, it was not agricultural land within the meaning of reg. 100 of the Defence Regulations, and that the direction of the 16th May, 1941, was accordingly void. It was contended for the officer that the fact that the field was used as a timber yard and had been used for a sawmill did not exclude the rest of the field from the direction, and that the direction was valid. The justices were of opinion that the larger part of the field fell within the definition in reg. 100 and that the direction was valid.

VISCOUNT CALDECOTE, C.J., said that the Minister of Agriculture's very great powers only related to "agricultural land" as defined in reg. 100 of the Defence Regulations. The finding that the appellant intended very soon to start his business as a timber merchant on the land again, that was, the occupier's intention for the future, was irrelevant. It was, however, impossible to get over the justices' finding that part of the field was used for the sawmill and the rest for storing the timber. That finding disentitled them from holding that the field came within the definition of agricultural land. It was urged by the Solicitor-General that the words "arable, meadow or pasture ground" in the definition of agricultural land in reg. 100 were referable not to the intention of the occupier of the land, but to the use being made of the surface of the soil. He (his lordship) was not unwilling to give a wide meaning to the definition of agricultural land; it was the intention of those who framed reg. 62 to give wide powers to the Minister of Agriculture; but even on that definition the justices' findings rendered their decision wrong, for the use being made of the soil was confined to the purposes of a sawmill and the timber connected with it. That the mill had not been in operation for some years made no difference. The appeal would be allowed.

HUMPHREYS and CASSELS, JJ., agreed.

COUNSEL: *F. S. Laskey; The Solicitor-General* (Sir David Maxwell Fyfe, K.C.) and *Valentine Holmes.*

SOLICITORS: *Gregory, Rowcliffe & Co.*, for *Marsh, Warry & Arrow*, Yeovil; *The Solicitor to the Ministry of Agriculture and Fisheries.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Books Received.

Practical Hints on Draft Leases (including the Emergency Legislation). By E. O. WALFORD, LL.D. (Lond.), Solicitor of the Supreme Court. With an introduction by His Hon. Judge LAWSON CAMPBELL. Third Edition. 1942. Demy 8vo. pp. xxiv and (with Index) 220. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

Workmen's Compensation Tables. Being a series of tables exemplifying the assessment of compensation under the Workmen's Compensation Acts, 1925 to 1940. Compiled by BERTRAM W. BELLAMY, F.C.I.I. 1942. Medium 8vo. pp. 26. London: Butterworth & Co. (Publishers), Ltd. 4s. net.

The Law and Reconstruction. Being the First Report of the Legal Reconstruction Sub-Committee of the Haldane Society, containing recommendations as to Law Reform capable of being carried into effect during the war. 1942. pp. 16. London: The Haldane Society. 4d. net.

English Studies in Criminal Science. Pamphlet Series. Penal Reconstruction and Development. Proceedings of the Conference held in Cambridge on the 14th November, 1941, between representatives of Nine Allied Countries and of the Department of Criminal Science in Cambridge University. 1942. pp. 30. Cambridge: The Squire Law Library. 2s. net.

E.P.T. Substituted Standards. By JAMES S. HEATON, Incorporated Accountant (Hons.). 1942. Demy 8vo. pp. 91 (with Index). London: Jordan & Sons, Ltd. 18s. net.

The Municipal Year Book, 1942. Edited by JAMES FORBES. Medium 8vo. pp. xlviii and 1,374 (with Index). London: The Municipal Journal, Ltd. 40s. net.

Rules and Orders.

S.R. & O., 1942, No. 959/L.13.

SUPREME COURT, ENGLAND—PROCEDURE.

THE MATRIMONIAL CAUSES (DECREE ABSOLUTE) RULES, 1942.

DATED MAY 20, 1942.

I, John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the powers conferred on me by section 1 of the Administration of Justice (Emergency Provisions) Act, 1939,* and of all other powers enabling me in this behalf, and with the concurrence of two other Judges of the Supreme Court, do hereby make the following Rules under section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925†:—

1. Where, in relation to a matrimonial cause in which a decree nisi has been pronounced, the proper books referred to in paragraph (3) of Rule 40 of the Matrimonial Causes Rules, 1937,‡ have been destroyed, it shall be a sufficient compliance with the provisions of that paragraph if an affidavit, sworn not more than six days before the time appointed, is filed—

(*a*) exhibiting a letter from the King's Proctor stating that he has not entered an appearance and has no cause to show against the decree being made absolute; and

(*b*) stating that to the best of the deponent's knowledge and belief no person other than the King's Proctor has appeared or obtained leave to intervene to show cause against the decree being made absolute.

2. These Rules may be cited as the Matrimonial Causes (Decree Absolute) Rules, 1942, and shall come into operation forthwith.

Dated the 20th day of May, 1942.

Simon, C.

We concur: *Caldecote*, C.J.
Merriman, P.

* 2 & 3 Geo. 6, c. 78. † 15 & 16 Geo. 5, c. 49. ‡ S.R. & O., 1937 (No. 1113), p. 2195.

LAW ASSOCIATION.

The usual monthly meeting of the directors was held on the 1st June, Mr. John Venning in the chair. There were eight other directors present and the Secretary. The sum of £998 was voted in renewal of allowance to pensioners and grants amongst applicants and other general business was transacted.